IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

TRC.No. 320 of 2000()

TA.433/1999 of S.T.A.T.ADDL.BENCH-II, ERNAKULAM
.....

REVISION PETITIONER: RESPONDENT - REVENUE

STATE OF KERALA REPRESENTED BY
DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY SPL. GOVERNMENT PLEADER (TAXES) SRI V.V.ASHOKAN.

RESPONDENT:APPELLANT - ASSESSEE

M/S. COUSINS,
MUNICIPAL SHOPPING COMPLEX,
NORTH PARUR.

BY ADV. SMT.S.K.DEVI
SRI.M.RAJ MOHAN
SRI.SANTHOSH P.ABRAHAM
SRI.FRANKUR D.JAYAN
SRI.K.P.PRADEEP (PAYYANNUR)
SRI.SHANMUGHAM D. JAYAN
SMT.P.K.MAYA DEVI

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C. No.320 of 2000

Dated, this the 12th day of June, 2007

ORDER

H.L. DATTU, CJ.

The Revenue, being aggrieved by the orders passed by the Sales Tax Appellate Tribunal, Additional Bench II, Ernakulam in T.A.No.433 of 1999 for the assessment year 1995-96 dated 21.3.2000 is before us in this revision petition filed under section 41 of the Kerala General Sales Tax Act read with Rule 41(1) of the Kerala General Sales Tax Rules.

2. The Revenue has raised the following question of law for our consideration and decision. The question of law reads as under:

> "Is not the Tribunal in error in construing the scope and purport of section 5(1)(vi) of the KGST Act? Is there any warrant under the said section to exclude the tax collection at the earlier point in the matter of computation of taxable turnover for exigibility to value added tax?"

3. The question of law raised in this revision petition is no more res integra in view of the law declared by a Division Bench of this Court in the case of ***State of Kerala v. The Chemmannur Distributors - [2003] 11 KTR 103.*** In the said decision the court has observed as under:

> "The respondent had purchased goods from the manufacturers who have collected sales tax at 12% on the purchases made by the respondent. The respondent had sold the goods and paid tax on the value addition at the rate of 12% and remitted the same. While paying the tax

> the respondent has excluded the entire purchase price including sales tax collected by the supplier and paid tax only on the value addition, that is the margin received by the respondent.
>
> The Tribunal held that the exemption will include sale tax paid at the purchase point. The decision of the Tribunal is confirmed."

4. In view of the law declared by this court, the question of law raised for our consideration and decision by the Revenue requires to be answered in the negative and in favour of the assessee. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L. DATTU, C.J. &

K.T. SANKARAN, J.

T.R.C. NO.320 OF 2000

ORDER

12.6.2007